

AMENDED IN SENATE MAY 11, 2016

AMENDED IN SENATE APRIL 26, 2016

**SENATE BILL**

**No. 1084**

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**Introduced by Senator Hancock**

February 17, 2016

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An act to amend Section 1170 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1084, as amended, Hancock. Sentencing.

Existing law authorizes a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without the possibility of parole to submit a petition for recall and resentencing after he or she has served at least 15 years of his or her sentence. Existing law prohibits a prisoner who tortured his or her victim or whose victim was a public safety official, as defined, from filing a petition for recall and resentencing. Existing law establishes certain criteria, at least one of which shall be asserted in the petition, to be considered when a court decides whether to conduct a hearing on the petition for recall and resentencing and additional criteria to be considered by the court when deciding whether to grant the petition. Existing law requires the court to hold a hearing if the court finds that the statements in the defendant's petition are true, as specified, and grants the court discretion to recall and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. *If the sentence is not recalled, existing law permits the defendant to submit another petition for recall when the defendant has been committed to the custody of the department for at least 20 years, and if the sentence*

*is not recalled at that hearing, existing law allows the defendant to file another petition after having served 24 years.*

This bill would instead authorize those prisoners to submit the petition for recall and resentencing after he or she has been ~~committed to the custody of the Department of Corrections and Rehabilitation~~ incarcerated for 15 years. *The bill would allow a defendant whose sentence was recalled, but who was resentenced to life without the possibility of parole, to make additional petitions as specified above.* The bill would also require a court, if it finds by a preponderance of the evidence that one or more of the qualifying criteria is true, to recall the sentence previously ordered and hold a hearing to resentence the defendant. The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1170 of the Penal Code, as amended by  
2 Section 1 of Chapter 378 of the Statutes of 2015, is amended to  
3 read:  
4 1170. (a) (1) The Legislature finds and declares that the  
5 purpose of imprisonment for crime is punishment. This purpose  
6 is best served by terms proportionate to the seriousness of the  
7 offense with provision for uniformity in the sentences of offenders  
8 committing the same offense under similar circumstances. The  
9 Legislature further finds and declares that the elimination of  
10 disparity and the provision of uniformity of sentences can best be  
11 achieved by determinate sentences fixed by statute in proportion  
12 to the seriousness of the offense as determined by the Legislature  
13 to be imposed by the court with specified discretion.  
14 (2) Notwithstanding paragraph (1), the Legislature further finds  
15 and declares that programs should be available for inmates,  
16 including, but not limited to, educational programs, that are  
17 designed to prepare nonviolent felony offenders for successful  
18 reentry into the community. The Legislature encourages the  
19 development of policies and programs designed to educate and  
20 rehabilitate nonviolent felony offenders. In implementing this  
21 section, the Department of Corrections and Rehabilitation is  
22 encouraged to give priority enrollment in programs to promote  
23 successful return to the community to an inmate with a short

1 remaining term of commitment and a release date that would allow  
2 him or her adequate time to complete the program.

3 (3) In any case in which the punishment prescribed by statute  
4 for a person convicted of a public offense is a term of imprisonment  
5 in the state prison or a term pursuant to subdivision (h) of any  
6 specification of three time periods, the court shall sentence the  
7 defendant to one of the terms of imprisonment specified unless  
8 the convicted person is given any other disposition provided by  
9 law, including a fine, jail, probation, or the suspension of  
10 imposition or execution of sentence or is sentenced pursuant to  
11 subdivision (b) of Section 1168 because he or she had committed  
12 his or her crime prior to July 1, 1977. In sentencing the convicted  
13 person, the court shall apply the sentencing rules of the Judicial  
14 Council. The court, unless it determines that there are  
15 circumstances in mitigation of the punishment prescribed, shall  
16 also impose any other term that it is required by law to impose as  
17 an additional term. Nothing in this article shall affect any provision  
18 of law that imposes the death penalty, that authorizes or restricts  
19 the granting of probation or suspending the execution or imposition  
20 of sentence, or expressly provides for imprisonment in the state  
21 prison for life, except as provided in paragraph (2) of subdivision  
22 (d). In any case in which the amount of preimprisonment credit  
23 under Section 2900.5 or any other law is equal to or exceeds any  
24 sentence imposed pursuant to this chapter, except for the remaining  
25 portion of mandatory supervision pursuant to subparagraph (B) of  
26 paragraph (5) of subdivision (h), the entire sentence shall be  
27 deemed to have been served, except for the remaining period of  
28 mandatory supervision, and the defendant shall not be actually  
29 delivered to the custody of the secretary or to the custody of the  
30 county correctional administrator. The court shall advise the  
31 defendant that he or she shall serve an applicable period of parole,  
32 postrelease community supervision, or mandatory supervision,  
33 and order the defendant to report to the parole or probation office  
34 closest to the defendant's last legal residence, unless the in-custody  
35 credits equal the total sentence, including both confinement time  
36 and the period of parole, postrelease community supervision, or  
37 mandatory supervision. The sentence shall be deemed a separate  
38 prior prison term or a sentence of imprisonment in a county jail  
39 under subdivision (h) for purposes of Section 667.5, and a copy

1 of the judgment and other necessary documentation shall be  
2 forwarded to the secretary.

3 (b) When a judgment of imprisonment is to be imposed and the  
4 statute specifies three possible terms, the choice of the appropriate  
5 term shall rest within the sound discretion of the court. At least  
6 four days prior to the time set for imposition of judgment, either  
7 party or the victim, or the family of the victim if the victim is  
8 deceased, may submit a statement in aggravation or mitigation. In  
9 determining the appropriate term, the court may consider the record  
10 in the case, the probation officer's report, other reports, including  
11 reports received pursuant to Section 1203.03, and statements in  
12 aggravation or mitigation submitted by the prosecution, the  
13 defendant, or the victim, or the family of the victim if the victim  
14 is deceased, and any further evidence introduced at the sentencing  
15 hearing. The court shall select the term which, in the court's  
16 discretion, best serves the interests of justice. The court shall set  
17 forth on the record the reasons for imposing the term selected and  
18 the court may not impose an upper term by using the fact of any  
19 enhancement upon which sentence is imposed under any provision  
20 of law. A term of imprisonment shall not be specified if imposition  
21 of sentence is suspended.

22 (c) The court shall state the reasons for its sentence choice on  
23 the record at the time of sentencing. The court shall also inform  
24 the defendant that as part of the sentence after expiration of the  
25 term he or she may be on parole for a period as provided in Section  
26 3000 or 3000.08 or postrelease community supervision for a period  
27 as provided in Section 3451.

28 (d) (1) When a defendant subject to this section or subdivision  
29 (b) of Section 1168 has been sentenced to be imprisoned in the  
30 state prison or county jail pursuant to subdivision (h) and has been  
31 committed to the custody of the secretary or the county correctional  
32 administrator, the court may, within 120 days of the date of  
33 commitment on its own motion, or at any time upon the  
34 recommendation of the secretary or the Board of Parole Hearings  
35 in the case of state prison inmates, or the county correctional  
36 administrator in the case of county jail inmates, recall the sentence  
37 and commitment previously ordered and resentence the defendant  
38 in the same manner as if he or she had not previously been  
39 sentenced, provided the new sentence, if any, is no greater than  
40 the initial sentence. The court resentencing under this subdivision

1 shall apply the sentencing rules of the Judicial Council so as to  
2 eliminate disparity of sentences and to promote uniformity of  
3 sentencing. Credit shall be given for time served.

4 (2) (A) (i) When a defendant who was under 18 years of age  
5 at the time of the commission of the offense for which the  
6 defendant was sentenced to imprisonment for life without the  
7 possibility of parole has been ~~committed to the custody of the~~  
8 ~~department~~ *incarcerated* for at least 15 years, the defendant may  
9 submit to the sentencing court a petition for recall and resentencing.

10 (ii) Notwithstanding clause (i), this paragraph shall not apply  
11 to defendants sentenced to life without parole for an offense where  
12 it was pled and proved that the defendant tortured, as described in  
13 Section 206, his or her victim or the victim was a public safety  
14 official, including any law enforcement personnel mentioned in  
15 Chapter 4.5 (commencing with Section 830) of Title 3, or any  
16 firefighter as described in Section 245.1, as well as any other officer  
17 in any segment of law enforcement who is employed by the federal  
18 government, the state, or any of its political subdivisions.

19 (B) The defendant shall file the original petition with the  
20 sentencing court. A copy of the petition shall be served on the  
21 agency that prosecuted the case. The petition shall include the  
22 defendant's statement that he or she was under 18 years of age at  
23 the time of the crime and was sentenced to life in prison without  
24 the possibility of parole, the defendant's statement describing his  
25 or her remorse and work towards rehabilitation, and the defendant's  
26 statement that one of the following is true:

27 (i) The defendant was convicted pursuant to felony murder or  
28 aiding and abetting murder provisions of law.

29 (ii) The defendant does not have juvenile felony adjudications  
30 for assault or other felony crimes with a significant potential for  
31 personal harm to victims prior to the offense for which the sentence  
32 is being considered for recall.

33 (iii) The defendant committed the offense with at least one adult  
34 codefendant.

35 (iv) The defendant has performed acts that tend to indicate  
36 rehabilitation or the potential for rehabilitation, including, but not  
37 limited to, availing himself or herself of rehabilitative, educational,  
38 or vocational programs, if those programs have been available at  
39 his or her classification level and facility, using self-study for  
40 self-improvement, or showing evidence of remorse.

1 (C) If any of the information required in subparagraph (B) is  
2 missing from the petition, or if proof of service on the prosecuting  
3 agency is not provided, the court shall return the petition to the  
4 defendant and advise the defendant that the matter cannot be  
5 considered without the missing information.

6 (D) A reply to the petition, if any, shall be filed with the court  
7 within 60 days of the date on which the prosecuting agency was  
8 served with the petition, unless a continuance is granted for good  
9 cause.

10 (E) If the court finds by a preponderance of the evidence that  
11 one or more of the statements specified in clauses (i) to (iv),  
12 inclusive, of subparagraph (B) is true, the court shall recall the  
13 sentence and commitment previously ordered and hold a hearing  
14 to resentence the defendant in the same manner as if the defendant  
15 had not previously been sentenced, provided that the new sentence,  
16 if any, is not greater than the initial sentence. Victims, or victim  
17 family members if the victim is deceased, shall retain the rights to  
18 participate in the hearing.

19 (F) The factors that the court may consider when determining  
20 whether to resentence the defendant to a term of imprisonment  
21 with the possibility of parole include, but are not limited to, the  
22 following:

23 (i) The defendant was convicted pursuant to felony murder or  
24 aiding and abetting murder provisions of law.

25 (ii) The defendant does not have juvenile felony adjudications  
26 for assault or other felony crimes with a significant potential for  
27 personal harm to victims prior to the offense for which the  
28 defendant was sentenced to life without the possibility of parole.

29 (iii) The defendant committed the offense with at least one adult  
30 codefendant.

31 (iv) Prior to the offense for which the defendant was sentenced  
32 to life without the possibility of parole, the defendant had  
33 insufficient adult support or supervision and had suffered from  
34 psychological or physical trauma, or significant stress.

35 (v) The defendant suffers from cognitive limitations due to  
36 mental illness, developmental disabilities, or other factors that did  
37 not constitute a defense, but influenced the defendant's  
38 involvement in the offense.

39 (vi) The defendant has performed acts that tend to indicate  
40 rehabilitation or the potential for rehabilitation, including, but not

1 limited to, availing himself or herself of rehabilitative, educational,  
2 or vocational programs, if those programs have been available at  
3 his or her classification level and facility, using self-study for  
4 self-improvement, or showing evidence of remorse.

5 (vii) The defendant has maintained family ties or connections  
6 with others through letter writing, calls, or visits, or has eliminated  
7 contact with individuals outside of prison who are currently  
8 involved with crime.

9 (viii) The defendant has had no disciplinary actions for violent  
10 activities in the last five years in which the defendant was  
11 determined to be the aggressor.

12 (G) The court shall have the discretion to resentence the  
13 defendant in the same manner as if the defendant had not  
14 previously been sentenced, provided that the new sentence, if any,  
15 is not greater than the initial sentence. The discretion of the court  
16 shall be exercised in consideration of the criteria in subparagraph  
17 (F). Victims, or victim family members if the victim is deceased,  
18 shall be notified of the resentencing hearing and shall retain their  
19 rights to participate in the hearing.

20 (H) If the sentence is not recalled or the defendant is resentedenced  
21 to imprisonment for life without the possibility of parole, the  
22 defendant may submit another petition for recall and resentencing  
23 to the sentencing court when the defendant has been committed  
24 to the custody of the department for at least 20 years. If the  
25 sentence is not recalled or the defendant is resentedenced to  
26 imprisonment for life without the possibility of parole under that  
27 petition, the defendant may file another petition after having ~~been~~  
28 ~~committed to the custody of the department for~~ *served* 24 years.  
29 The final petition may be submitted, and the response to that  
30 petition shall be determined, during the 25th year of the defendant's  
31 ~~commitment to the department.~~ *sentence.*

32 (I) In addition to the criteria in subparagraph (F), the court may  
33 consider any other criteria that the court deems relevant to its  
34 decision, so long as the court identifies them on the record,  
35 provides a statement of reasons for adopting them, and states why  
36 the defendant does or does not satisfy the criteria.

37 (J) This subdivision shall have retroactive application.

38 (K) Nothing in this paragraph is intended to diminish or abrogate  
39 any rights or remedies otherwise available to the defendant.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary or the Board of Parole Hearings or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the secretary or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

The Board of Parole Hearings shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the secretary or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall



1 contact the inmate's emergency contact and provide the information  
2 described in paragraph (2).

3 (5) The warden or the warden's representative shall provide the  
4 prisoner and his or her family member, agent, or emergency  
5 contact, as described in paragraph (4), updated information  
6 throughout the recall and resentencing process with regard to the  
7 prisoner's medical condition and the status of the prisoner's recall  
8 and resentencing proceedings.

9 (6) Notwithstanding any other provisions of this section, the  
10 prisoner or his or her family member or designee may  
11 independently request consideration for recall and resentencing  
12 by contacting the chief medical officer at the prison or the  
13 secretary. Upon receipt of the request, the chief medical officer  
14 and the warden or the warden's representative shall follow the  
15 procedures described in paragraph (4). If the secretary determines  
16 that the prisoner satisfies the criteria set forth in paragraph (2), the  
17 secretary or board may recommend to the court that the prisoner's  
18 sentence be recalled. The secretary shall submit a recommendation  
19 for release within 30 days in the case of inmates sentenced to  
20 determinate terms and, in the case of inmates sentenced to  
21 indeterminate terms, the secretary shall make a recommendation  
22 to the Board of Parole Hearings with respect to the inmates who  
23 have applied under this section. The board shall consider this  
24 information and make an independent judgment pursuant to  
25 paragraph (2) and make findings related thereto before rejecting  
26 the request or making a recommendation to the court. This action  
27 shall be taken at the next lawfully noticed board meeting.

28 (7) Any recommendation for recall submitted to the court by  
29 the secretary or the Board of Parole Hearings shall include one or  
30 more medical evaluations, a postrelease plan, and findings pursuant  
31 to paragraph (2).

32 (8) If possible, the matter shall be heard before the same judge  
33 of the court who sentenced the prisoner.

34 (9) If the court grants the recall and resentencing application,  
35 the prisoner shall be released by the department within 48 hours  
36 of receipt of the court's order, unless a longer time period is agreed  
37 to by the inmate. At the time of release, the warden or the warden's  
38 representative shall ensure that the prisoner has each of the  
39 following in his or her possession: a discharge medical summary,  
40 full medical records, state identification, parole or postrelease

1 community supervision medications, and all property belonging  
2 to the prisoner. After discharge, any additional records shall be  
3 sent to the prisoner's forwarding address.

4 (10) The secretary shall issue a directive to medical and  
5 correctional staff employed by the department that details the  
6 guidelines and procedures for initiating a recall and resentencing  
7 procedure. The directive shall clearly state that any prisoner who  
8 is given a prognosis of six months or less to live is eligible for  
9 recall and resentencing consideration, and that recall and  
10 resentencing procedures shall be initiated upon that prognosis.

11 (11) The provisions of this subdivision shall be available to an  
12 inmate who is sentenced to a county jail pursuant to subdivision  
13 (h). For purposes of those inmates, "secretary" or "warden" shall  
14 mean the county correctional administrator and "chief medical  
15 officer" shall mean a physician designated by the county  
16 correctional administrator for this purpose.

17 (f) Notwithstanding any other provision of this section, for  
18 purposes of paragraph (3) of subdivision (h), any allegation that  
19 a defendant is eligible for state prison due to a prior or current  
20 conviction, sentence enhancement, or because he or she is required  
21 to register as a sex offender shall not be subject to dismissal  
22 pursuant to Section 1385.

23 (g) A sentence to state prison for a determinate term for which  
24 only one term is specified, is a sentence to state prison under this  
25 section.

26 (h) (1) Except as provided in paragraph (3), a felony punishable  
27 pursuant to this subdivision where the term is not specified in the  
28 underlying offense shall be punishable by a term of imprisonment  
29 in a county jail for 16 months, or two or three years.

30 (2) Except as provided in paragraph (3), a felony punishable  
31 pursuant to this subdivision shall be punishable by imprisonment  
32 in a county jail for the term described in the underlying offense.

33 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
34 (A) has a prior or current felony conviction for a serious felony  
35 described in subdivision (c) of Section 1192.7 or a prior or current  
36 conviction for a violent felony described in subdivision (c) of  
37 Section 667.5, (B) has a prior felony conviction in another  
38 jurisdiction for an offense that has all the elements of a serious  
39 felony described in subdivision (c) of Section 1192.7 or a violent  
40 felony described in subdivision (c) of Section 667.5, (C) is required

1 to register as a sex offender pursuant to Chapter 5.5 (commencing  
2 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime  
3 and as part of the sentence an enhancement pursuant to Section  
4 186.11 is imposed, an executed sentence for a felony punishable  
5 pursuant to this subdivision shall be served in state prison.

6 (4) Nothing in this subdivision shall be construed to prevent  
7 other dispositions authorized by law, including pretrial diversion,  
8 deferred entry of judgment, or an order granting probation pursuant  
9 to Section 1203.1.

10 (5) (A) Unless the court finds that, in the interests of justice, it  
11 is not appropriate in a particular case, the court, when imposing a  
12 sentence pursuant to paragraph (1) or (2), shall suspend execution  
13 of a concluding portion of the term for a period selected at the  
14 court's discretion.

15 (B) The portion of a defendant's sentenced term that is  
16 suspended pursuant to this paragraph shall be known as mandatory  
17 supervision, and, unless otherwise ordered by the court, shall  
18 commence upon release from physical custody or an alternative  
19 custody program, whichever is later. During the period of  
20 mandatory supervision, the defendant shall be supervised by the  
21 county probation officer in accordance with the terms, conditions,  
22 and procedures generally applicable to persons placed on probation,  
23 for the remaining unserved portion of the sentence imposed by the  
24 court. The period of supervision shall be mandatory, and may not  
25 be earlier terminated except by court order. Any proceeding to  
26 revoke or modify mandatory supervision under this subparagraph  
27 shall be conducted pursuant to either subdivisions (a) and (b) of  
28 Section 1203.2 or Section 1203.3. During the period when the  
29 defendant is under that supervision, unless in actual custody related  
30 to the sentence imposed by the court, the defendant shall be entitled  
31 to only actual time credit against the term of imprisonment imposed  
32 by the court. Any time period which is suspended because a person  
33 has absconded shall not be credited toward the period of  
34 supervision.

35 (6) The sentencing changes made by the act that added this  
36 subdivision shall be applied prospectively to any person sentenced  
37 on or after October 1, 2011.

38 (7) The sentencing changes made to paragraph (5) by the act  
39 that added this paragraph shall become effective and operative on

1 January 1, 2015, and shall be applied prospectively to any person  
2 sentenced on or after January 1, 2015.

3 (i) This section shall remain in effect only until January 1, 2017,  
4 and as of that date is repealed, unless a later enacted statute, that  
5 is enacted before that date, deletes or extends that date.

6 SEC. 2. Section 1170 of the Penal Code, as amended by Section  
7 2 of Chapter 378 of the Statutes of 2015, is amended to read:

8 1170. (a) (1) The Legislature finds and declares that the  
9 purpose of imprisonment for crime is punishment. This purpose  
10 is best served by terms proportionate to the seriousness of the  
11 offense with provision for uniformity in the sentences of offenders  
12 committing the same offense under similar circumstances. The  
13 Legislature further finds and declares that the elimination of  
14 disparity and the provision of uniformity of sentences can best be  
15 achieved by determinate sentences fixed by statute in proportion  
16 to the seriousness of the offense as determined by the Legislature  
17 to be imposed by the court with specified discretion.

18 (2) Notwithstanding paragraph (1), the Legislature further finds  
19 and declares that programs should be available for inmates,  
20 including, but not limited to, educational programs, that are  
21 designed to prepare nonviolent felony offenders for successful  
22 reentry into the community. The Legislature encourages the  
23 development of policies and programs designed to educate and  
24 rehabilitate nonviolent felony offenders. In implementing this  
25 section, the Department of Corrections and Rehabilitation is  
26 encouraged to give priority enrollment in programs to promote  
27 successful return to the community to an inmate with a short  
28 remaining term of commitment and a release date that would allow  
29 him or her adequate time to complete the program.

30 (3) In any case in which the punishment prescribed by statute  
31 for a person convicted of a public offense is a term of imprisonment  
32 in the state prison, or a term pursuant to subdivision (h), of any  
33 specification of three time periods, the court shall sentence the  
34 defendant to one of the terms of imprisonment specified unless  
35 the convicted person is given any other disposition provided by  
36 law, including a fine, jail, probation, or the suspension of  
37 imposition or execution of sentence or is sentenced pursuant to  
38 subdivision (b) of Section 1168 because he or she had committed  
39 his or her crime prior to July 1, 1977. In sentencing the convicted  
40 person, the court shall apply the sentencing rules of the Judicial

1 Council. The court, unless it determines that there are  
2 circumstances in mitigation of the punishment prescribed, shall  
3 also impose any other term that it is required by law to impose as  
4 an additional term. Nothing in this article shall affect any provision  
5 of law that imposes the death penalty, that authorizes or restricts  
6 the granting of probation or suspending the execution or imposition  
7 of sentence, or expressly provides for imprisonment in the state  
8 prison for life, except as provided in paragraph (2) of subdivision  
9 (d). In any case in which the amount of preimprisonment credit  
10 under Section 2900.5 or any other provision of law is equal to or  
11 exceeds any sentence imposed pursuant to this chapter, except for  
12 a remaining portion of mandatory supervision imposed pursuant  
13 to subparagraph (B) of paragraph (5) of subdivision (h), the entire  
14 sentence shall be deemed to have been served, except for the  
15 remaining period of mandatory supervision, and the defendant  
16 shall not be actually delivered to the custody of the secretary or  
17 the county correctional administrator. The court shall advise the  
18 defendant that he or she shall serve an applicable period of parole,  
19 postrelease community supervision, or mandatory supervision and  
20 order the defendant to report to the parole or probation office  
21 closest to the defendant's last legal residence, unless the in-custody  
22 credits equal the total sentence, including both confinement time  
23 and the period of parole, postrelease community supervision, or  
24 mandatory supervision. The sentence shall be deemed a separate  
25 prior prison term or a sentence of imprisonment in a county jail  
26 under subdivision (h) for purposes of Section 667.5, and a copy  
27 of the judgment and other necessary documentation shall be  
28 forwarded to the secretary.

29 (b) When a judgment of imprisonment is to be imposed and the  
30 statute specifies three possible terms, the court shall order  
31 imposition of the middle term, unless there are circumstances in  
32 aggravation or mitigation of the crime. At least four days prior to  
33 the time set for imposition of judgment, either party or the victim,  
34 or the family of the victim if the victim is deceased, may submit  
35 a statement in aggravation or mitigation to dispute facts in the  
36 record or the probation officer's report, or to present additional  
37 facts. In determining whether there are circumstances that justify  
38 imposition of the upper or lower term, the court may consider the  
39 record in the case, the probation officer's report, other reports,  
40 including reports received pursuant to Section 1203.03, and

1 statements in aggravation or mitigation submitted by the  
2 prosecution, the defendant, or the victim, or the family of the victim  
3 if the victim is deceased, and any further evidence introduced at  
4 the sentencing hearing. The court shall set forth on the record the  
5 facts and reasons for imposing the upper or lower term. The court  
6 may not impose an upper term by using the fact of any  
7 enhancement upon which sentence is imposed under any provision  
8 of law. A term of imprisonment shall not be specified if imposition  
9 of sentence is suspended.

10 (c) The court shall state the reasons for its sentence choice on  
11 the record at the time of sentencing. The court shall also inform  
12 the defendant that as part of the sentence after expiration of the  
13 term he or she may be on parole for a period as provided in Section  
14 3000 or 3000.08 or postrelease community supervision for a period  
15 as provided in Section 3451.

16 (d) (1) When a defendant subject to this section or subdivision  
17 (b) of Section 1168 has been sentenced to be imprisoned in the  
18 state prison or county jail pursuant to subdivision (h) and has been  
19 committed to the custody of the secretary or the county correctional  
20 administrator, the court may, within 120 days of the date of  
21 commitment on its own motion, or at any time upon the  
22 recommendation of the secretary or the Board of Parole Hearings  
23 in the case of state prison inmates, or the county correctional  
24 administrator in the case of county jail inmates, recall the sentence  
25 and commitment previously ordered and resentence the defendant  
26 in the same manner as if he or she had not previously been  
27 sentenced, provided the new sentence, if any, is no greater than  
28 the initial sentence. The court resentencing under this subdivision  
29 shall apply the sentencing rules of the Judicial Council so as to  
30 eliminate disparity of sentences and to promote uniformity of  
31 sentencing. Credit shall be given for time served.

32 (2) (A) (i) When a defendant who was under 18 years of age  
33 at the time of the commission of the offense for which the  
34 defendant was sentenced to imprisonment for life without the  
35 possibility of parole has been ~~committed to the custody of the~~  
36 ~~department~~ *incarcerated* for at least 15 years, the defendant may  
37 submit to the sentencing court a petition for recall and resentencing.

38 (ii) Notwithstanding clause (i), this paragraph shall not apply  
39 to defendants sentenced to life without parole for an offense where  
40 it was pled and proved that the defendant tortured, as described in

1 Section 206, his or her victim or the victim was a public safety  
2 official, including any law enforcement personnel mentioned in  
3 Chapter 4.5 (commencing with Section 830) of Title 3, or any  
4 firefighter as described in Section 245.1, as well as any other officer  
5 in any segment of law enforcement who is employed by the federal  
6 government, the state, or any of its political subdivisions.

7 (B) The defendant shall file the original petition with the  
8 sentencing court. A copy of the petition shall be served on the  
9 agency that prosecuted the case. The petition shall include the  
10 defendant's statement that he or she was under 18 years of age at  
11 the time of the crime and was sentenced to life in prison without  
12 the possibility of parole, the defendant's statement describing his  
13 or her remorse and work towards rehabilitation, and the defendant's  
14 statement that one of the following is true:

15 (i) The defendant was convicted pursuant to felony murder or  
16 aiding and abetting murder provisions of law.

17 (ii) The defendant does not have juvenile felony adjudications  
18 for assault or other felony crimes with a significant potential for  
19 personal harm to victims prior to the offense for which the sentence  
20 is being considered for recall.

21 (iii) The defendant committed the offense with at least one adult  
22 codefendant.

23 (iv) The defendant has performed acts that tend to indicate  
24 rehabilitation or the potential for rehabilitation, including, but not  
25 limited to, availing himself or herself of rehabilitative, educational,  
26 or vocational programs, if those programs have been available at  
27 his or her classification level and facility, using self-study for  
28 self-improvement, or showing evidence of remorse.

29 (C) If any of the information required in subparagraph (B) is  
30 missing from the petition, or if proof of service on the prosecuting  
31 agency is not provided, the court shall return the petition to the  
32 defendant and advise the defendant that the matter cannot be  
33 considered without the missing information.

34 (D) A reply to the petition, if any, shall be filed with the court  
35 within 60 days of the date on which the prosecuting agency was  
36 served with the petition, unless a continuance is granted for good  
37 cause.

38 (E) If the court finds by a preponderance of the evidence that  
39 one or more of the statements specified in clauses (i) to (iv),  
40 inclusive, of subparagraph (B) is true, the court shall recall the

1 sentence and commitment previously ordered and hold a hearing  
2 to resentence the defendant in the same manner as if the defendant  
3 had not previously been sentenced, provided that the new sentence,  
4 if any, is not greater than the initial sentence. Victims, or victim  
5 family members if the victim is deceased, shall retain the rights to  
6 participate in the hearing.

7 (F) The factors that the court may consider when determining  
8 whether to resentence the defendant to a term of imprisonment  
9 with the possibility of parole include, but are not limited to, the  
10 following:

11 (i) The defendant was convicted pursuant to felony murder or  
12 aiding and abetting murder provisions of law.

13 (ii) The defendant does not have juvenile felony adjudications  
14 for assault or other felony crimes with a significant potential for  
15 personal harm to victims prior to the offense for which the  
16 defendant was sentenced to life without the possibility of parole.

17 (iii) The defendant committed the offense with at least one adult  
18 codefendant.

19 (iv) Prior to the offense for which the defendant was sentenced  
20 to life without the possibility of parole, the defendant had  
21 insufficient adult support or supervision and had suffered from  
22 psychological or physical trauma, or significant stress.

23 (v) The defendant suffers from cognitive limitations due to  
24 mental illness, developmental disabilities, or other factors that did  
25 not constitute a defense, but influenced the defendant's  
26 involvement in the offense.

27 (vi) The defendant has performed acts that tend to indicate  
28 rehabilitation or the potential for rehabilitation, including, but not  
29 limited to, availing himself or herself of rehabilitative, educational,  
30 or vocational programs, if those programs have been available at  
31 his or her classification level and facility, using self-study for  
32 self-improvement, or showing evidence of remorse.

33 (vii) The defendant has maintained family ties or connections  
34 with others through letter writing, calls, or visits, or has eliminated  
35 contact with individuals outside of prison who are currently  
36 involved with crime.

37 (viii) The defendant has had no disciplinary actions for violent  
38 activities in the last five years in which the defendant was  
39 determined to be the aggressor.



1 (G) The court shall have the discretion to resentence the  
2 defendant in the same manner as if the defendant had not  
3 previously been sentenced, provided that the new sentence, if any,  
4 is not greater than the initial sentence. The discretion of the court  
5 shall be exercised in consideration of the criteria in subparagraph  
6 (F). Victims, or victim family members if the victim is deceased,  
7 shall be notified of the resentencing hearing and shall retain their  
8 rights to participate in the hearing.

9 (H) If the sentence is not recalled or the defendant is resentedenced  
10 to imprisonment for life without the possibility of parole, the  
11 defendant may submit another petition for recall and resentencing  
12 to the sentencing court when the defendant has been committed  
13 to the custody of the department for at least 20 years. If the  
14 sentence is not recalled or the defendant is resentedenced to  
15 imprisonment for life without the possibility of parole under that  
16 petition, the defendant may file another petition after having been  
17 committed to the custody of the department for *served* 24 years.  
18 The final petition may be submitted, and the response to that  
19 petition shall be determined, during the 25th year of the defendant's  
20 ~~commitment to the department.~~ *sentence.*

21 (I) In addition to the criteria in subparagraph (F), the court may  
22 consider any other criteria that the court deems relevant to its  
23 decision, so long as the court identifies them on the record,  
24 provides a statement of reasons for adopting them, and states why  
25 the defendant does or does not satisfy the criteria.

26 (J) This subdivision shall have retroactive application.

27 (K) Nothing in this paragraph is intended to diminish or abrogate  
28 any rights or remedies otherwise available to the defendant.

29 (e) (1) Notwithstanding any other law and consistent with  
30 paragraph (1) of subdivision (a), if the secretary or the Board of  
31 Parole Hearings or both determine that a prisoner satisfies the  
32 criteria set forth in paragraph (2), the secretary or the board may  
33 recommend to the court that the prisoner's sentence be recalled.

34 (2) The court shall have the discretion to resentence or recall if  
35 the court finds that the facts described in subparagraphs (A) and  
36 (B) or subparagraphs (B) and (C) exist:

37 (A) The prisoner is terminally ill with an incurable condition  
38 caused by an illness or disease that would produce death within  
39 six months, as determined by a physician employed by the  
40 department.

1 (B) The conditions under which the prisoner would be released  
2 or receive treatment do not pose a threat to public safety.

3 (C) The prisoner is permanently medically incapacitated with  
4 a medical condition that renders him or her permanently unable  
5 to perform activities of basic daily living, and results in the prisoner  
6 requiring 24-hour total care, including, but not limited to, coma,  
7 persistent vegetative state, brain death, ventilator-dependency, loss  
8 of control of muscular or neurological function, and that  
9 incapacitation did not exist at the time of the original sentencing.

10 The Board of Parole Hearings shall make findings pursuant to  
11 this subdivision before making a recommendation for resentencing  
12 or recall to the court. This subdivision does not apply to a prisoner  
13 sentenced to death or a term of life without the possibility of parole.

14 (3) Within 10 days of receipt of a positive recommendation by  
15 the secretary or the board, the court shall hold a hearing to consider  
16 whether the prisoner's sentence should be recalled.

17 (4) Any physician employed by the department who determines  
18 that a prisoner has six months or less to live shall notify the chief  
19 medical officer of the prognosis. If the chief medical officer  
20 concurs with the prognosis, he or she shall notify the warden.  
21 Within 48 hours of receiving notification, the warden or the  
22 warden's representative shall notify the prisoner of the recall and  
23 resentencing procedures, and shall arrange for the prisoner to  
24 designate a family member or other outside agent to be notified  
25 as to the prisoner's medical condition and prognosis, and as to the  
26 recall and resentencing procedures. If the inmate is deemed  
27 mentally unfit, the warden or the warden's representative shall  
28 contact the inmate's emergency contact and provide the information  
29 described in paragraph (2).

30 (5) The warden or the warden's representative shall provide the  
31 prisoner and his or her family member, agent, or emergency  
32 contact, as described in paragraph (4), updated information  
33 throughout the recall and resentencing process with regard to the  
34 prisoner's medical condition and the status of the prisoner's recall  
35 and resentencing proceedings.

36 (6) Notwithstanding any other provisions of this section, the  
37 prisoner or his or her family member or designee may  
38 independently request consideration for recall and resentencing  
39 by contacting the chief medical officer at the prison or the  
40 secretary. Upon receipt of the request, the chief medical officer

1 and the warden or the warden's representative shall follow the  
2 procedures described in paragraph (4). If the secretary determines  
3 that the prisoner satisfies the criteria set forth in paragraph (2), the  
4 secretary or board may recommend to the court that the prisoner's  
5 sentence be recalled. The secretary shall submit a recommendation  
6 for release within 30 days in the case of inmates sentenced to  
7 determinate terms and, in the case of inmates sentenced to  
8 indeterminate terms, the secretary shall make a recommendation  
9 to the Board of Parole Hearings with respect to the inmates who  
10 have applied under this section. The board shall consider this  
11 information and make an independent judgment pursuant to  
12 paragraph (2) and make findings related thereto before rejecting  
13 the request or making a recommendation to the court. This action  
14 shall be taken at the next lawfully noticed board meeting.

15 (7) Any recommendation for recall submitted to the court by  
16 the secretary or the Board of Parole Hearings shall include one or  
17 more medical evaluations, a postrelease plan, and findings pursuant  
18 to paragraph (2).

19 (8) If possible, the matter shall be heard before the same judge  
20 of the court who sentenced the prisoner.

21 (9) If the court grants the recall and resentencing application,  
22 the prisoner shall be released by the department within 48 hours  
23 of receipt of the court's order, unless a longer time period is agreed  
24 to by the inmate. At the time of release, the warden or the warden's  
25 representative shall ensure that the prisoner has each of the  
26 following in his or her possession: a discharge medical summary,  
27 full medical records, state identification, parole or postrelease  
28 community supervision medications, and all property belonging  
29 to the prisoner. After discharge, any additional records shall be  
30 sent to the prisoner's forwarding address.

31 (10) The secretary shall issue a directive to medical and  
32 correctional staff employed by the department that details the  
33 guidelines and procedures for initiating a recall and resentencing  
34 procedure. The directive shall clearly state that any prisoner who  
35 is given a prognosis of six months or less to live is eligible for  
36 recall and resentencing consideration, and that recall and  
37 resentencing procedures shall be initiated upon that prognosis.

38 (11) The provisions of this subdivision shall be available to an  
39 inmate who is sentenced to a county jail pursuant to subdivision  
40 (h). For purposes of those inmates, "secretary" or "warden" shall

1 mean the county correctional administrator and “chief medical  
2 officer” shall mean a physician designated by the county  
3 correctional administrator for this purpose.

4 (f) Notwithstanding any other provision of this section, for  
5 purposes of paragraph (3) of subdivision (h), any allegation that  
6 a defendant is eligible for state prison due to a prior or current  
7 conviction, sentence enhancement, or because he or she is required  
8 to register as a sex offender shall not be subject to dismissal  
9 pursuant to Section 1385.

10 (g) A sentence to state prison for a determinate term for which  
11 only one term is specified, is a sentence to state prison under this  
12 section.

13 (h) (1) Except as provided in paragraph (3), a felony punishable  
14 pursuant to this subdivision where the term is not specified in the  
15 underlying offense shall be punishable by a term of imprisonment  
16 in a county jail for 16 months, or two or three years.

17 (2) Except as provided in paragraph (3), a felony punishable  
18 pursuant to this subdivision shall be punishable by imprisonment  
19 in a county jail for the term described in the underlying offense.

20 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
21 (A) has a prior or current felony conviction for a serious felony  
22 described in subdivision (c) of Section 1192.7 or a prior or current  
23 conviction for a violent felony described in subdivision (c) of  
24 Section 667.5, (B) has a prior felony conviction in another  
25 jurisdiction for an offense that has all the elements of a serious  
26 felony described in subdivision (c) of Section 1192.7 or a violent  
27 felony described in subdivision (c) of Section 667.5, (C) is required  
28 to register as a sex offender pursuant to Chapter 5.5 (commencing  
29 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime  
30 and as part of the sentence an enhancement pursuant to Section  
31 186.11 is imposed, an executed sentence for a felony punishable  
32 pursuant to this subdivision shall be served in state prison.

33 (4) Nothing in this subdivision shall be construed to prevent  
34 other dispositions authorized by law, including pretrial diversion,  
35 deferred entry of judgment, or an order granting probation pursuant  
36 to Section 1203.1.

37 (5) (A) Unless the court finds, in the interest of justice, that it  
38 is not appropriate in a particular case, the court, when imposing a  
39 sentence pursuant to paragraph (1) or (2), shall suspend execution

1 of a concluding portion of the term for a period selected at the  
2 court's discretion.

3 (B) The portion of a defendant's sentenced term that is  
4 suspended pursuant to this paragraph shall be known as mandatory  
5 supervision, and, unless otherwise ordered by the court, shall  
6 commence upon release from physical custody or an alternative  
7 custody program, whichever is later. During the period of  
8 mandatory supervision, the defendant shall be supervised by the  
9 county probation officer in accordance with the terms, conditions,  
10 and procedures generally applicable to persons placed on probation,  
11 for the remaining unserved portion of the sentence imposed by the  
12 court. The period of supervision shall be mandatory, and may not  
13 be earlier terminated except by court order. Any proceeding to  
14 revoke or modify mandatory supervision under this subparagraph  
15 shall be conducted pursuant to either subdivisions (a) and (b) of  
16 Section 1203.2 or Section 1203.3. During the period when the  
17 defendant is under that supervision, unless in actual custody related  
18 to the sentence imposed by the court, the defendant shall be entitled  
19 to only actual time credit against the term of imprisonment imposed  
20 by the court. Any time period which is suspended because a person  
21 has absconded shall not be credited toward the period of  
22 supervision.

23 (6) The sentencing changes made by the act that added this  
24 subdivision shall be applied prospectively to any person sentenced  
25 on or after October 1, 2011.

26 (7) The sentencing changes made to paragraph (5) by the act  
27 that added this paragraph shall become effective and operative on  
28 January 1, 2015, and shall be applied prospectively to any person  
29 sentenced on or after January 1, 2015.

30 (i) This section shall become operative on January 1, 2017.